



**PUBLIC INTEREST  
COMMISSIONER**

A report of the Public Interest Commissioner  
in the matter of disclosures of wrongdoing under the  
*Public Interest Disclosure  
(Whistleblower Protection) Act*

Referenced Case  
Case: #PIC-16-02114

Allegations Related to a Private School

February 2, 2017



**This is a public report. Generic language has been used to protect the identity of the parties involved.**

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### Foreword

An effective public service depends on the commitment of everyone who works in it to maintain the highest possible standards of honesty, openness and accountability. The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) creates a confidential avenue for public servants to speak out about wrongdoings or make complaints of reprisal. Employees and other complainants covered by this legislation can choose to report internally or, in limited circumstances, directly to the Public Interest Commissioner (the Commissioner). Whether the matter is investigated by the public entity or the Commissioner, Albertans expect the investigation will be thorough, objective and complete. Whistleblowers have the same expectation, and must have confidence their concerns will not be met with reprisal. Management needs to ensure this and should embrace whistleblowing as an opportunity to make positive change.

The Act came into force June 2013, and facilitates the disclosure and investigation of significant and serious matters or reprisals occurring in government departments, offices of the Legislature and public entities (including provincial agencies, boards and commissions, post-secondary academic institutions, school boards, charter schools, accredited private schools that receive grants and public sector health entities).

The Act stipulates the Commissioner must prepare a report on completion of an investigation which sets out the findings, reasons for those findings and any recommendations considered appropriate respecting the disclosure and the wrongdoing. In cases where the subject matter of a disclosure that is being investigated involved the chief officer or the designated officer of a public entity, section 23(b) of the Act requires a copy of the report to be provided to the minister responsible and to the board of directors or the person designated to act as the head of the public entity. A separate report has been provided to the Minister and to the board of directors of the private school fulfilling that requirement.



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## Mandate

The Commissioner is an independent Officer of the Legislature, who reports to the Legislative Assembly as a whole. Investigators conduct investigations and provide advice as required in respect of disclosures and complaints of reprisals for employees of provincial government and other jurisdictional public entities.

Section 2(2) of the Act states the purposes of the office are:

- (a) to facilitate the disclosure and investigation of significant and serious matters in or relating to departments, public entities or offices of the Legislature, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,
- (b) to protect employees who make those disclosures,
- (c) to manage, investigate and make recommendations respecting disclosures of wrongdoing and reprisals,
- (d) to promote public confidence in the administration of departments, public entities and offices of the Legislature ....

Our larger aim is to promote a culture in the public sector where employees and managers share a common goal of reporting, investigating and changing practices to prevent or remedy wrongdoings.

Section 3(1) of the Act defines wrongdoings as:

- (a) a contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;
- (b) an act or omission that creates
  - (i) a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or
  - (ii) a substantial and specific danger to the environment;
- (c) gross mismanagement of public funds or a public asset;
- (d) knowingly directing or counselling an individual to commit a wrongdoing mentioned in clauses (a) to (c).

The purpose of an investigation by the Commissioner is to bring the wrongdoing to the attention of the affected department, public entity or office of the Legislature and to recommend corrective measures. This promotes confidence in the administration of the department, public entity or office of the Legislature and encourages whistleblowers to come forward without fear of reprisal.



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## Allegations

On May 30, 2016, the Commissioner received a disclosure of alleged wrongdoing concerning a private school in Alberta (the Private School). The Private School is a registered accredited funded private school under the *School Act*, and also operates an Early Childhood Services (ECS) program. The Private School is publically funded, receiving grants under the *Education Grants Regulation*.

### It was alleged:

1. The Head of School, also referred to as the school Director (Director), contravened the *Early Childhood Services Regulation* by using non-certificated teachers at the Private School to instruct children funded under Alberta Education programs.
2. The Director, in operating the Private School, intentionally misled the Department of Education (the Department) in order to maintain and receive additional funding for the private school.
3. The Director counselled an employee to commit wrongdoing by classifying non-eligible students as English language learners in order to secure additional program funding.

Following the initial investigation of these allegations and interviews with witnesses, the Commissioner found reason to believe other wrongdoings may have been committed and initiated an investigation into the following, per section 20(1) of the Act:

4. Whether the Private School was misappropriating public funds to support a third-party organization, thereby potentially committing a wrongdoing under the Act.
5. Whether the Private School offered a benefit to a government official for the purpose of obtaining an advantage in government business or a benefit conferred by government, thereby potentially committing a wrongdoing under the Act.

## Findings

The findings are presented here. The facts and analysis in respect of each issue is developed thereafter.

1. A non-certificated teacher instructed children within the Private School's ECS program during its 2014-2015 school year. Although this technically contravened the *Early Childhood Services Regulation*, there was a lack of clear direction from the Department and the problem was rectified the following year. Therefore, I did not find this to be a wrongdoing under the Act.
2. The Director did not mislead the Department in order to maintain and receive additional funding, and therefore wrongdoing did not occur.



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3. The Director did not counsel an employee to commit wrongdoing.
4. The Private School did not misappropriate public funds to a third-party organization; therefore, wrongdoing did not occur.
5. The Private School did not offer a benefit to a government official; therefore, wrongdoing did not occur.

**Note:** Observations relative to these findings are addressed later in this report on pages 11 - 13.

## Overview

The investigation encompassed an extensive review and analysis of 2,989 records, a review of Department policies and applicable legislation. Fifteen witnesses from the Private School and the Department were interviewed as part of the investigation. Oral and written responses were received from the Private School through independent counsel.

The investigation did not find wrongdoing. Some deficiencies were identified in the Department's private school accreditation approval process and in the monitoring of private schools.

## Allegation the Private School contravened the *Early Childhood Services Regulation*

### *Process of Investigation*

The investigation first examined the statutory requirements within the *Early Childhood Services Regulation* and *School Act* regarding requirements for ECS operators to employ certificated teachers.

The investigation then sought to determine if certificated teachers instructed children within the Private School's ECS program, in a manner consistent with the requirements of the *Early Childhood Services Regulation*.

### *Facts of the Investigation*

#### **The requirement for a certificated teacher within an ECS program**

ECS are educational programs for children under the age of age 6 and includes Kindergarten, the year before Grade One and educational programming for children as young as 2½ years old.<sup>1</sup>

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<sup>1</sup> <https://education.alberta.ca/early-childhood-education/childhood-development/everyone/preschool-information/>



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Section 5 of the *Early Childhood Services Regulation* requires the operator of an ECS program to “only employ as a teacher an individual who holds a certificate of qualification as a teacher issued under the [School] Act.”

Conflicting information was received from the Department regarding this requirement. One Department official advised a certificated teacher is required to instruct ECS programs, and “instruction” is considered face-to-face interaction between teacher and student. Another Department official advised a certificated teacher is not required to be in the classroom and is only required to be accessible and to supervise the program. However, the interpretations agree that a certificated teacher is required to some degree in an ECS program. The Department also advised non-certificated staff must be overseen by certificated teachers.

During the Private School’s 2014-15 school year, a non-certificated teacher (the Instructor) oversaw the ECS programming within the preschool class including planning, liaising with parents, filling out child assessment forms and ongoing oversight of children.

The certificated teachers at the Private School during the 2014-15 school year confirmed they did not supervise the ECS programming within the preschool class, and did not supervise the Instructor.

Although the Instructor was not a certificated teacher, the Instructor was certified as a Child Development Supervisor and had experience with children. In its following year, the Private School appointed a certificated teacher to oversee the ECS program including the preschool class.

### ***Analysis***

The *Early Childhood Services Regulation* requires the ECS operators to “only employ as a teacher an individual who holds a certificate of qualification as a teacher issued under the [School] Act.” In 2014-15, the Instructor did not have a certificate of qualification as a teacher. Notwithstanding the varying interpretations of the degree of supervision required by certificated teachers of a preschool class, the certificated teachers employed at the Private School during the 2014-15 school year confirmed they neither instructed nor supervised the children within the ECS preschool class.

### ***Conclusion***

The investigation found there was a lack of clarity by the Department regarding the requirements for certificated teachers within ECS programs. The practice at the Private School changed after its initial year to having qualified teachers supervising/teaching. As a result, I find there is no wrongdoing as there was no apparent intent to mislead or otherwise neglect to conform to requirements. Had the situation not changed, however, this would require further comment. The benefit of any doubt goes to the nature of the Private School being in its first year and correctly modifying its practices early on.





## Allegation the school Director misled Alberta Education

### *Process of Investigation*

The investigation initially examined the requirements for a private school to become an accredited funded private school and the process of application and approval by the Department.

The investigation then examined the type of funding received by the school, the funding eligibility requirements, the processes used by the Department to approve and audit funding claims, applicable legislation, policies and funding manuals.

The investigation sought to verify the Private School obtained funding to which it was entitled.

### *Facts of the Investigation*

#### **In relation to the application to operate a private school**

Under the *School Act*, a private school is entitled to be an accredited funded private school in Alberta on application to the Minister of the Department. In May 2014, the Private School submitted an application to the Department to operate as an accredited funded private school.

The application met the requirements of the Department. On recommendation by the Department, the Minister approved the application on July 18, 2014, and the Private School became an accredited funded private school.

Operators of private schools are required to designate a principal per section 12(1) of the *Private Schools Regulation*. Our review of the Private School's application noted the individual identified as the principal was not the principal of the Private School and was not an employee. However, the Private School appointed an individual who met the statutory requirements in October of its first year of operation.

#### **In relation to grant funding received by the Private School**

Private schools may apply for grants by the Minister of Education under the *Education Grants Regulation*. As part of the funding it received from the Department, the Private School received grants for English as a Second Language (ESL) and Program Unit Funding (PUF).

ESL funding may be claimed for funded children/students who require additional English language supports and instruction to achieve grade level expectations in English and other subject areas.<sup>2</sup> The Department does not have specific rules relating to how a private school may use funds it receives for ESL.

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<sup>2</sup> Funding Manual For School Authorities 2014/2015 School Year; Alberta Education



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According to the Department's funding manual, annual assessment documentation must be kept on file at the school that supports the coding and funding of these students.<sup>3</sup> The annual assessments are required to be completed by the certificated teacher having direct supervision of the student. The Department advised there is no specific assessment document that must be used and schools have discretion regarding the content of the assessments. There is no requirement for the teacher conducting the assessment to request additional ESL support, and this is a discretionary decision made by school administration. The Private School reported it uses ESL benchmarks provided by the Department as the assessment documentation supporting coding and funding for students.

Although assessments are a requirement for ESL coding, monitors do not review the content of the assessment and only confirm the existence of the document. Further, if during a Department review it is found an assessment is not completed for an ESL coded student, the school will be asked to provide one. A Department staff acknowledged this affords an opportunity for an assessment to be conducted to support the existing coding. This was noted to be the case with the Private School.

PUF is available to approved ECS operators and school authorities for young children who are 2½ to 6 years of age by September 1 (of the school year) and who have been identified with a severe disability or delay. Accredited funded private schools with an ECS program must submit an application, including a budget, to receive PUF. The Private School submitted an application and budget to the Department and subsequently received PUF funding.

### **In relation to reporting requirements when funding is received**

Private schools that receive grants are required to account to the Minister for how the grant money or any portion of it was or is being used.<sup>4</sup> This is done annually through an audited financial statement submitted to the Minister.<sup>5</sup> The Private School has prepared financial statements reporting its expenditures applicable to the ESL and PUF funding it received. In this regard, the Private School met its statutory requirement. It was noted, however, there was a lack of documentation provided by the Private School supporting the ESL and PUF expenditures claimed.

### **In relation to monitoring of private schools by the Department**

The Department undertakes "monitoring visits" of private schools. Monitoring involves on-site visits and a review of mandatory requirements as outlined in applicable legislation and regulations, including programming, to assure alignment with regulations governing private schools and private ECS operators. Accredited funded private schools are monitored on a regular and cycled basis by Field Services Managers (Department monitors). Private ECS operators are monitored on a regular basis by the School Accreditation and Standards branch.<sup>6</sup>

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<sup>3</sup> Funding Manual For School Authorities 2014/2015 School Year; Alberta Education

<sup>4</sup> Section 7(a)(ii) *Education Grants Regulation* AR 120/2008

<sup>5</sup> Section 15(1) *Private Schools Regulation* AR 190/2000

<sup>6</sup> <https://education.alberta.ca/private-schools/monitoring/>



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The Department undertook monitoring visits of the Private School during the 2014-15 and 2015-16 school years. The Department advised it provides the monitoring guide to private schools in advance of visits, and provides the questions that monitors intend to ask. The school being monitored is also allowed to select the teachers the Department monitors will interview.

The Department interviewed teachers and the principal at the Private School during monitoring visits; however, this was done in the presence of school administration and members of the Board of Directors. Department monitors believed this did not have an impact on the responses they received and teaching staff reported no concerns. Teaching staff, however, advised they did not feel they could openly and freely speak with monitors while school administrators were present and their answers would have been different had school administrators not been present.

### *Analysis*

Student assessments are required to support ESL funding claims for students; however, the Department is not steadfast on the content of these assessments or when they must be provided. The Department accepted the ESL and PUF funding claims by the Private School, and the Private School met its statutory requirements and prepared/submitted financial statements reporting its program expenditures.

### *Conclusion*

The Director did not mislead the Department in order to secure funding; therefore, wrongdoing did not occur.

## **Allegation an employee was counselled to commit wrongdoing**

### *Process of Investigation*

The Act defines counselling a wrongdoing as a separate and distinct wrongdoing. The investigation sought to determine if an employee was counselled by the Director to classify non-eligible students as requiring English language training in order to secure ESL funding.

### *Analysis*

Facts of this investigation are outlined in the issue above. Although it was determined an administrator for the school entered the coding for the students, there was no indication the Director influenced any decisions.



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### *Conclusion*

There is insufficient information to support a finding of wrongdoing.

## **The issue of whether the Private School misappropriated public funds**

### *Process of Investigation*

During the investigation of the initial allegations, witnesses reported the Private School's association with a transnational religious and social movement, indicating an organization associated with the movement was a tenant at the school and this relationship involved some financial irregularities. As this provided the potential for a further wrongdoing, I ordered this be included in the investigation under section 20(1) of the Act.

The investigation sought to verify the legitimate use of public funds received by the Private School. This included a detailed analysis of the Private School's financial records, bank records and financial statements to determine whether public funds were moved outside the Private School in order to support a third-party organization. The investigation of this issue also included a review of the third-party organization in question.

### *Facts of the Investigation*

The Private School is associated with a transnational religious and social movement. Association with a religious or social movement is not wrongdoing.

The investigation did not find public funds were moved to a third-party organization.

### *Conclusion*

I do not find a wrongdoing has occurred. Although information was lacking at times, the investigation did not find public funds were misappropriated to a third-party organization.



## The issue of whether the Private School offered a benefit to a government official

### *Process of Investigation*

During the investigation, information was found indicating an individual may have offered a benefit to a government official for the purpose of obtaining an advantage in government business. I ordered this matter be investigated per section 20(1) of the Act as a possible wrongdoing.

The investigation sought to determine if the Private School offered a benefit, specifically trips, to a government official in order to obtain an advantage in its private school application or during government audits.

### *Facts of the Investigation*

Investigators interviewed the government official to which the issue applied. The government official advised a specific offer or inducement was not made by the Private School. Investigators confirmed no benefit was received by the government official.

### *Conclusion*

No wrongdoing was found in respect of the allegation a benefit was offered to a government employee.

## Observations

In cases where a finding of wrongdoing is supported, I may make recommendations to assist departments to address the matter appropriately and advance public confidence.

In circumstances where wrongdoing is not found, yet a practice or action is identified as a concern, observations are made through our independent investigation and are documented for the benefit of the public entity and the department to consider and implement changes. Observations are not monitored in the same manner as recommendations. I communicate my observations to remedy what might otherwise become a wrongdoing under the Act if they were to continue.

Four observations are being made from this investigation:

1. During our review of the Private School's financial records, we found the documentation and detail in its record keeping was lacking, making it difficult to assess the merit of the issues. The Private School should



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consider improving its record keeping to provide a more robust and complete accounting. This will enhance transparency and provide enhanced confidence in its reporting.

2. Teachers are required to complete assessments for students when ESL funding is claimed; however, there is no requirement for the teacher to make a specific recommendation for ESL funding on the assessment. ESL funding claims therefore become a discretionary decision made by school administrators. Rules guiding the appropriate use of this funding are subjective, not well-defined and open to interpretation. This process can result in discrepancies between teachers and school administrators regarding whether funding is required for a particular student, and the appropriate use of those funds. The Department advised it does not define how ESL funding should be spent, the type of assessment to be used, or the programming (to be used); rather, it provides guidance and support to school authorities. A better process would require a school to adhere to clear guidelines and for the Department to provide oversight. This would provide enhanced confidence tax dollars are going to effective programs.
3. There were concerns noted with the Department's process of approving the Private School's application. Specifically:
  - The Department did not confirm the person identified as the principal was employed at the private school. In this case, the individual identified as the principal of the Private School was not an employee of the school and had no connection to the school;
  - The Department did not undertake formal interviews with the applicants of the Private School;
  - Department officials met with individuals reportedly representing the Private School, who had no legal connection to the private school;
  - At the time the application was recommended for approval to the Minister, the Private School had \$130 in its account. It is unclear what testing was in place to ensure the financial viability of the Private School before the recommendation for approval was made;
  - A Department official advised at the time of the application, approval was a checkbox exercise. If all of the boxes were ticked, the application was recommended for approval. The Department official further advised it has since implemented a more robust system of review and approval of private school applications.
4. There were concerns noted with the Department's process of monitoring private schools, including the Private School subject of this investigation. Specifically:
  - The Department permits assessments for ESL to be completed after the funding request is submitted. In the case of the Private School, students were coded at the beginning of the school year; however, assessments were not completed until February. This length of a lapse may pose issues if funding were to be adjusted based on the assessments.
  - As part of its monitoring practice, the Department advises private schools in advance when monitors will be visiting, the specific student records it intends on reviewing and the specific questions it intends to ask. The approach may not always provide an accurate perspective of the day-to-day operations of the school. This was evidenced through teaching staff who reported the Private School made changes in staffing and required teachers to practice responses in advance of the monitoring visits.



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- The Department does not interview principals and teaching staff independently, and allows school administration and board members to be present. In the case of the Private School, teaching staff did not believe they were able to speak freely to monitors during the visit.

These observations are provided for the purpose of assisting public entities to enhance policies, procedures and processes with an aim for enhanced accountability and transparency.



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